THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.5798 OF 2006

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Dated: 23-03-2006

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Between

Y. Jyothirmoy, S/o. Y.V. Janardhan,

Occ: Xerox Business,

R/o.H.No.7-1-65/5, SBI Colony,

D.K. Road, Ameerpet, Hyderabad

and others.

...PETITIONERS

AND

Municipal Corporation of Hyderabad,

Tank Bund Road, Hyderabad,

Rep. by its Commissioner.

...RESPONDENT

ORDER:

Petitioners seek a Writ of Mandamus to declare the action of the respondent in attempting to demolish their business premises in the stilt/cellar of Amrutha Business Complex bearing H.No.7-1-58 situated at Panjagutta, Hyderabad by issuing the Notice in Lr.No.NIL/TPS/C5/MCH/2006 dated 16-03-2006 under Section 636 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act') as illegal and arbitrary.

Heard the learned counsel appearing for the petitioners as well as the learned standing

counsel appearing for the respondent.

Learned counsel for the petitioners submits that the petitioners are owners of different shops in Amrutha Business Complex in the stilt/cellar bearing H.No.7-1-58 situated at Ameerpet, Hyderabad having purchased the same vide registered sale deeds in 1992 and are running business like medical stores, STD booth, Xerox, Canteen etc since 15 years and the respondent is also collecting the property tax on commercial basis. He further submits that the respondent has sanctioned permission to the owner of the Complex vide permit No.163/18 in File No.35/3P-8/MCH/1987 dated 27.06.1987 permitting him to construct cellar, ground floor plus 3 upper floors in total five floors. He further submits that there is about 2000 sq. feet of parking space in the said complex and there is no complaint from any corner with regard to the parking space and the petitioners are also ready to provide 1000 sq. feet more for parking space, if required.

While so, the respondent without issuing any show cause notice, issued a notice in letter No.NIL/TPS/C5/MCH/2006, dated 16-03-2006 under Section 636 of Hyderabad Municipal Corporation Act, 1955, stating that the petitioners have made constructions not covered by the sanctioned plan and converted parking space in cellar floor other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the road, creating lot of traffic congestion, accident and public nuisance and also that the High Court in suo-motto contempt case in C.C.No.101 of 1996, dated 28-02-1996 ordered that steps be taken immediately for creation for parking areas with a view to reduce traffic congestion being created on account of cars being parked on roads for want of parking within the premises. Accordingly, the petitioners were directed to remove the said unauthorized structures within three days.

I am of the opinion that issuing notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 is in respect of the buildings, which have been constructed after obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act. If that is the case, it is for the respondents to point out whether the petitioners have converted the parking place into shops. If there is any deviation or conversion, it is for the respondents to issue a show

cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the constructions have been made without any permission, has been issued directing the petitioners to remove the structures.

Having regard to the facts and circumstances of the case, the impugned notice dated 16-03-2006 in Lr.No.NIL/TPS/C5/MCH/2006 is directed to be treated as a show cause notice only permitting the petitioners to file a representation/explanation within one week from the date of receipt of a copy of this order and till such representation/explanation is considered and appropriate orders are passed and communicated to the petitioners, the respondents shall not remove or demolish the premises of the petitioners.

The writ petition is disposed of accordingly.

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V.ESWARAIAH, J

March 23, 2006

Note: Furnish C.C. of the order by 25.03.2006

(**B/o**)

DSK